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8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA, RIVERSIDE DIVISION**  
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11 In re  
12 **JOHNPAUL A. ABELLA,**  
13 **Debtor.**

Case No. 6:16-bk-20827-SY

Adv. Proc. No.

Chapter 7

14  
15 **LARRY D. SIMONS, Chapter 7 Trustee,**  
16 **Plaintiff,**

**COMPLAINT TO AUTHORIZE SALE OF  
PROPERTY OWNED IN PART BY NON-  
DEBTORS**

**[11 USC § 363(H)]**

17 v.

18 **SARA A. ABELLA, an individual; and DAVID**  
19 **ALEJANDRO NUNEZ, an individual,**  
20 **Defendants.**

DATE: TO BE SET  
TIME: TO BE SET  
PLACE: Courtroom 302  
United States Bankruptcy Court  
3420 Twelfth Street  
Riverside, CA 92501

21 **TO THE HONORABLE SCOTT H. YUN, UNITED STATES BANKRUPTCY JUDGE; THE**  
22 **DEFENDANTS, AND THEIR COUNSEL OF RECORD, IF ANY:**

23 For his Complaint for Authority to Sell Property Owned, in part, by Non-Debtors (the  
24 "Complaint") against defendants Sara. A. Abella ("Abella") and David Alejandro Nunez ("Nunez")  
25 (Abella and Nunez are collectively referred herein as the "Defendants"), plaintiff Larry D. Simons,  
26 the duly appointed, qualified and acting Chapter 7 Trustee for the estate of the debtor JohnPaul A.  
27 Abella (the "Debtor") hereby alleges as follows:  
28

**STATEMENT OF JURISDICTION, PARTIES AND PROCEEDINGS**

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a), as this is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B) and (O). Venue properly lies in this judicial district pursuant to 28 U.S.C. § 1409(a), in that the instant proceeding is related to a case under title 11 of the United States Code which is still pending.

2. Plaintiff, Larry D. Simons (the "Trustee" or "Plaintiff") is the duly appointed, qualified and acting Chapter 7 Trustee of the bankruptcy estate (the "Estate") created in the instant Chapter 7 bankruptcy case pending in the United States Bankruptcy Court, Central District of California, Riverside Division which is styled In JohnPaul A. Abella, bearing Case No. 6:16-bk-20827-SY (the "Bankruptcy Case").

3. The debtor JohnPaul A. Abella (the "Debtor") initiated this case by filing a voluntary Chapter 7 petition on December 10, 2016 (the "Petition Date").

4. Defendants Sara A. Abella ("Abella") and David Alejandro Nunez ("Nunez") are individuals residing within the jurisdiction of this Court. Abella and Nunez are collectively referred herein as the "Defendants".

5. Plaintiff is informed and believes and, on that basis, alleges that at all relevant times, Abella is the mother of the Debtor.

6. Plaintiff is informed and believes and, on that basis, alleges that at all relevant times, Nunez is the brother of the Debtor.

**ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

7. The instant complaint (the "Complaint") against the Defendants initiates an adversary proceeding in which Plaintiff is seeking authority to sell the Defendants' interest in real property commonly known as 17393 Barbee Street, Fontana, California 92336 (the "Subject Property").

8. The Debtor and the Defendants obtained joint title to the Subject Property via a Grant Deed recorded with the San Bernardino County Recorder on July 15, 2015, as instrument number 2015-0301461 (the "Grant Deed").

1           9.     The Grant Deed provides that title to the Subject Property, was, and currently is,  
2     vested as "Sara A. Abella, an unmarried woman, John Paul Abella, a single man and David  
3     Alejandro Nunez, an unmarried man, all as joint tenants".

4           10.    The Debtor failed to disclose in his bankruptcy schedules his interest in the Subject  
5     Property.

6           11.    Plaintiff is informed and believes and, on that basis alleges that, the Subject Property  
7     is located in the Central District of California.

8           12.    Plaintiff is informed and believes and, on that basis alleges that as of the Petition  
9     Date, the Subject Property was encumbered by a deed of trust in favor of Provident Savings Bank,  
10    FSB ("Provident") or its successors with an approximate principal balance of \$117,000.00.

11          13.    Plaintiff is informed and believes and, on that basis alleges that the Subject Property  
12    has a current fair market value of approximately \$260,000.00.

13                               **FIRST CLAIM FOR RELIEF**

14                               **TO OBTAIN APPROVAL FOR SALE OF REAL PROPERTY OWNED,**

15                               **IN PART, BY A NON-DEBTORS**

16                               **[11 U.S.C. § 363(h)]**

17          14.    Plaintiff realleges each and every allegation contained in paragraphs 1 through 13 of  
18    this Complaint and, by reference, incorporates the allegations as though set forth fully herein.

19          15.    Based upon the current value of the Subject Property and the outstanding debt  
20    against the Subject Property as of the Petition Date, and taking into account, estimated costs of sale,  
21    the Subject Property has gross equity of about \$122,200.00, at least one-third of which constitutes  
22    property of the Estate.

23          16.    Partition of the Subject Property between the Estate and the Defendants is  
24    impracticable.

25          17.    The sale of the Estate's undivided interest in the Subject Property would realize  
26    significantly less for the Estate than sale of the Subject Property free of the interests of the  
27    Defendants.  
28

18. The benefit to the Estate of a sale of the Subject Property free of the interests of the Defendants outweighs the detriment, if any, to the Defendants.

19. The Subject Property is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light or power.


20. By reason of the foregoing, the Plaintiff may sell the interest of Defendants in the Subject Property pursuant to 11 U.S.C. Section 363(h).

**WHEREFORE**, Plaintiff respectfully prays for judgment as follows:

1. To obtain approval for the sale of the interests of the non-Debtor Defendants in the Subject Property pursuant to 11 U.S.C. § 363(h);
2. For attorney's fees; and
3. For costs of suit incurred herein; and
4. For such other and further relief as this Court deems just and proper.

Dated: July 17, 2017

**LAW OFFICES OF LARRY D. SIMONS**

  
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Trustee

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